

What is most significant is how that result affects consumers. If ILECs must absorb the full cost of establishing LNP in their networks, and if they lose customers to CLECs, then the ILECs' remaining customers will be forced to bear a disproportionately large share of the cost of LNP, while those customers who change to a CLEC will bear a disproportionately smaller share of LNP costs because they will not have to pay for LNP implementation in the ILECs' large network.

Viewed in this way, it is difficult to conclude that a cost recovery approach in which the ILECs absorb the full costs of implementing LNP in their networks comports with the federal Act's "competitively neutral" requirement. It also does not appear to comport with the DCA's tests for consumer competitive neutrality stated above. There seems to be some justification for requiring the CLECs to bear not only their own costs to implement and provide LNP, but also for requiring the CLECs and their customers to bear some proportionate share of the ILECs' costs of implementing LNP.

The DCA recognizes that spreading the cost of carrier-specific LNP implementation of some providers among all providers may necessitate additional bureaucracy and regulation. As a general rule, the DCA strongly advocates deregulation of the telecommunications industry to only that regulation which is essential. Therefore, it will be important for the FCC to obtain adequate information from providers regarding their carrier-specific LNP implementation costs so that the FCC can accurately assess whether those costs warrant the bureaucratic expense and regulation that spreading those costs may engender.

10. Paragraph 223. Although the federal Act does not specifically address recovery of LNP costs from customers, in Paragraph 223 the FCC seeks comment on how

those costs might be recovered were the FCC to permit cost recovery from consumers. It identifies two options: (1) "allow carriers the flexibility to recover their number portability-specific costs from their customers in whatever manner the carrier chooses;" or, (2) "require carriers to recover their number portability-specific costs through a number portability charge assessed on their end user customers located in areas where number portability is available."

In a fully competitive marketplace, the first option naturally occurs -- each provider decides how it will recover those costs. Often, it will recover them by charging a high price for its most inelastic services -- in the case of telecommunications, that is basic service. For providers who serve multiple areas, the most inelastic services might be services provided to customers in areas where no competitor exists, and where LNP also may not exist.

In order for consumers to be able to make an accurate assessment of whether the value they receive from LNP is sufficient to warrant its cost, consumers must be aware of the amount they are paying for LNP. This is most fairly accomplished in a nondiscriminatory and competitively neutral manner through the use of an all end user surcharge (AEUS). However, some telecommunications providers do not appear to support the funding of LNP implementation through an all end-user surcharge (AEUS), and argue that an AEUS is not competitively neutral. They seem to believe (and perhaps correctly) that if consumers are aware they are paying for the cost of LNP implementation, consumers may feel that opening the local exchange market to competition is a negative, rather than a positive step, and that it will discourage consumers from changing providers.<sup>11</sup>

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<sup>11</sup> From an abstract perspective, an AEUS is a truly competitively neutral funding mechanism because it is imposed on each and every telecommunications user in equal amount or percentage of use, irrespective of which provider serves the user. The DCA does not

For those reasons, the DCA believes that in this instance, the better approach may be a two-tiered approach. It may be appropriate to require carriers to recover their direct LNP specific costs through an AEUS -- a percentage of the end user's telephone bill. In contrast, each provider might be allowed the market freedom to choose how it will recover its ongoing LNP costs. IN the alternative, the DCA recommends the use of an AEUS for both types of costs, because it provides consumers with the information they need to make informed purchasing decisions. In any event, the DCA believes that it is particularly important that this cost recovery be limited to areas where number portability is available.

11. Paragraph 224. In this paragraph, the FCC identifies several additional issues raised if carrier-specific, number portability-specific costs are passed on to consumers. The FCC seeks comment on the following:

whether, under any cost recovery mechanism, the costs to consumers should (1) vary among carriers in a given geographic region; (2) remain constant among all carriers in a given geographic region; or (3) vary among different geographic regions, e.g., states or LATAs (while remaining constant within that region, i.e., state or LATA).

It also seeks comment on "whether carriers should charge their customers a single, one-time charge, a monthly fee, or some percentage of the customer's monthly bill, to recover their carrier-specific number portability-specific costs." Additionally, the FCC seeks comment on "whether such a charge should be specifically identified on consumer bills from those carriers as a separate line item."

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believe that potential consumer dissatisfaction about the cost of providing LNP is an adequate basis for failing to disclose that cost to consumers.

In the event that the FCC pools carrier-specific LNP costs and passes them on to consumers, the DCA believes that the costs to consumers should remain constant among all carriers in a given geographic region so that they comport with consumer competitive neutrality. At least initially, those regions might be the 100 MSAs in which the FCC has ordered the implementation of LNP. Regions in which CLECs request that LNP be implemented could be included as those requests are submitted.

As stated above, the DCA believes that the charge should be a percentage of the customer's monthly bill, prorated over a period of several years to reflect the increased costs of implementing LNP as it develops over time. The charge should be specifically identified on consumer bills as a separate line item. Only by providing consumers with this information will consumers be aware of the true costs of LNP. That information is essential in order for consumers to determine whether the cost of LNP is worth the benefits LNP provides consumers. In a competitive marketplace, consumers usually can and do make those types of decisions. They should be allowed the opportunity to make that decision here as well.

12. Paragraph 225. Here, the FCC seeks comment on "whether carriers should be permitted to recover carrier-specific, number portability-specific costs from other carriers, through increases in charges for regulated services."

The DCA believes that at least in some situations, to the extent that an ILEC incurs a cost for providing LNP service to another carrier that it would not otherwise have incurred absent LNP, it may be appropriate to allow the ILEC to pass that cost on to the other provider. For example, if an ILEC performs a LNP related service, it incurs a cost for that

service, and it passes on that cost to its retail customers. If the ILEC performs that same LNP-related service for another provider in conjunction with services sold to that provider at wholesale, it seems appropriate that the ILEC be allowed to recover its cost from the other provider. If the ILEC does not pass that cost on to the other provider -- the cost causer -- the cost will be borne by the ILEC's retail customers -- an inappropriate result.

Moreover, to the extent that the ILEC performs a LNP-related service for another provider, the other provider avoids the cost of providing that service itself. The other provider also can appropriately pass the ILEC's charge on to its customers. Some might argue that this will result in the other provider's customers being charged twice, once for the ILEC's cost that was passed on to the other provider, and a second time for the LNP costs of the other provider. However, because the other provider avoids the cost of providing the LNP service provided by the ILEC, its internal LNP costs should be reduced by at least that amount; were that not so, an efficient provider would elect to provide that service itself rather than purchase it from the ILEC. Therefore, the cost is appropriately passed on to the customers of the other service provider.

#### **D. Indirect Carrier-Specific LNP Implementation Costs.**

13. Paragraph 226. In this paragraph, the FCC seeks comment on its tentative conclusion that "carrier-specific costs not directly related to number portability should be borne by individual carriers as network upgrades."

With the caveats stated above in response to Paragraph 208, the DCA agrees with this conclusion.

#### IV. CONCLUSION.

In fashioning all aspects of LNP, including cost recovery, the FCC should focus on the effect of LNP on the interests of all consumers. That means that LNP should be viewed from the perspective of all consumers -- not just those who want to both change their provider and port their existing number, but also those consumers who so not wish to change their provider, those who would prefer to change their existing number rather than pay the cost to retain it, and especially those who may never have the option to take advantage of LNP.

In allocating the costs of LNP, the federal Act distinguishes between the costs to implement LNP, and ongoing LNP costs. While the federal Act appears to compel the distribution of LNP implementation costs among all telecommunications providers, rather than imposing all of those costs on the cost causers, no such requirement exists with respect to ongoing LNP costs. Therefore, the FCC generally should allocate ongoing LNP costs on the cost causers.

Similarly, allocation of LNP implementation costs among customers might be most appropriate through an AEUS. However, it may be appropriate to allow providers to determine the manner in which they will recover ongoing LNP costs.

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